In the High Court of Judicature at Madras

Dated:1.08.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. MANIKUMAR

Habeas Corpus Petition No.689 of 2006

S. Sivagami .. Petitioner

vs.

1. The Government of Tamil Nadu
   rep. by its Secretary
   to Government
   Home Department
   Fort St. George
   Chennai 600 009.

2. The Inspector General of Prisons
   Office of the Inspector General of
   Prisons
   Thalamuthu Natarajan Maligai Annexe
   Gandhi Irwin Road,
   Chennai 600 008.

3. The Superintendent
   Central Prison
   Thuraipadi, Vellore.

4. The Sub-Inspector of Police
   Central Crime Branch
   Egmore, Chennai 600 008. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Habeas corpus as stated therein.

For petitioner : Mr. L. Rajasekar

For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner, by name, S. Sivagami, has filed this petition for the production of her son, S.Mathialagan, aged about 42 years, the detenu herein, before this Court and set him at liberty.

2. In the affidavit filed in support of the above petition it is stated that her son is now confined in Central Prison, Vellore, serving the sentence of two years imposed by this Court in Crl.R.C.No.259 of 2003 dated 17.03.2004. According to the petitioner, her son, S.Mathialagan, was initially charge sheeted for an offence under Section 408 IPC in C.C.No.1212 of 2001 and the said case was tried by XI Metropolitan Magistrate, Saidapet, Chennai and after trial, the learned Magistrate found him guilty for an offence under Section 406 IPC and imposed a sentence of 3 years rigorous imprisonment and fine of Rs.5,000/- vide judgment dated 22.04.2002. The fine amount was remitted before the trial Court.

3. Against the said conviction and sentence, her son preferred an appeal in Criminal Appeal No.106 of 2002 before the VII Additional Sessions Judge, Chennai, who confirmed the conviction and sentence, by judgment dated 18.02.2002. Aggrieved by the same, her son preferred a Criminal Revision in Crl.R.C.No.259 of 2003 before this Court. This court, while confirming the finding of the learned VII Additional Sessions Judge, Chennai, directed the accused to pay a sum of Rs.1,10,000/- in lieu of the sentence, vide order dated 17.03.2004. In the same order, the learned Judge also directed her son to pay the sum of Rs.1,10,000/- within 3 months from the date of receipt of copy of the order, failing which he was ordered to undergo 2 years imprisonment. Since her son Mathialagan could not pay the above said sum of Rs.1,10,000/- within the stipulated period as ordered by this Court, he surrendered before the XI Metropolitan Magistrate, Saidapet, Chennai on 19.07.2004 and he was confined in the Central Prison, Chennai from 19.07.2004 to 07.10.2004. Thereafter, he was transferred to the Central Prison, Vellore. Her son remains in Judicial custody for the period mentioned below.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

a	Initial arrest and confinement as remand prisoner in Corporation No.700/97 from 28.03.2000 to 18.04.2000. ...	22 days.
b.	After confirmation of sentence in C.A.No.106 of 2002, from 18.02.2003 to 06.03.2003. ...	16 days.
c.	From date of surrender before the learned Magistrate on 19.07.2004 till in confinement.	

4. It is her claim that after giving credit to the period of imprisonment undergone by her son, he ought to have been released on 10.06.2006, as calculated and mentioned in the card given by the third respondent to her son, however, the third respondent did not release her son even after the expiry of 2 year period of default sentence imposed by this Court. She issued a legal notice dated 16.06.2006 to respondents 1 to 3 and in spite of the same, her son was not released from the prison. In such circumstances, having no other remedy, the petitioner / mother of the detenu filed the present writ petition.

5. The third respondent, Superintendent of Central Prison, Vellore, has filed a counter affidavit reiterating the conviction and sentence imposed by the trial Court, the order of the appellate Court and the modified order by the revisional Court. It is further stated that as per the direction issued in conviction warrant by the XI Metropolitan Magistrate, Saidapet, Chennai dated 08.10.2004, the accused did not pay the amount of Rs.1,10,000/- imposed in lieu of sentence and the learned Magistrate committed him to the Central Prison, Vellore on 09.10.2004. Since no direction was issued for setting off the period already undergone by the detenu/accused, he will be released only on 07.10.2006.

6. In the light of the above particulars furnished by the petitioner as well as the third respondent, we heard their respective counsel.

WEB COPY

7. It is seen from the counter affidavit of the third respondent that the conviction warrant was issued by the XI Metropolitan Magistrate, Saidapet, Chennai on 08.10.2004. The third respondent is of the view that since the detenu/accused has not paid the amount of Rs.1,10,000/- as directed by this Court in lieu of sentence, his date of release would be 07.10.2006. However, it is brought to our notice that since the detenu was not in a position to pay

https://hcservices.ecourts.gov.in/hcservices/

the amount of Rs.1,10,000/- within the prescribed period, he surrendered before the XI Metropolitan Magistrate, Saidapet, Chennai on 19.07.2004. If we consider the said date, which is relevant, as rightly pointed out by the learned counsel and in view of the order passed by this Court in Crl.R.C.No.259 of 2003, two year period came to an end on 08.06.2006. No doubt, the conviction warrant was issued by the XI Metropolitan Magistrate, Saidapet, Chennai only on 08.10.2004. However, the fact remains, after surrendering himself, the detenu is in prison from 19.07.2004. If that be so, he completed his conviction period as per the order of the revisional Court on 08.06.2006.

Under these circumstances, direction is issued to the respondents, particularly, the third respondent to release the detenu, viz., S. Mathialagan, Convict No.18126, forthwith, unless he is required in any other case.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary
   to Government
   Government of Tamil Nadu
   Home Department
   Fort St. George
   Chennai 600 009.

2. The Inspector General of Prisons
   Office of the Inspector General of
   Prisons
   Thalamuthu Natarajan Maligai Annexe
   Gandhi Irwin Road,
   Chennai 600 008.

3. The Superintendent
   Central Prison
   Thuraipadi, Vellore.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The Sub-Inspector of Police
   Central Crime Branch
   Egmore, Chennai 600 008.

5. The Public Prosecutor
High Court, Madras

+ one cc to Mr. L. Rajasekar, Advocate sr no. 33985

JSK(CO)
NM(03.08.2006)

H.C.P.No.689 of 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/